

years, and the opportunity to amortize any costs over the duration of that period, and the inordinate value of exclusive use of the shoreline, must be evaluated. Again, the public has the right to understand and comment on the Commission's determinations of feasibility. This has not occurred on the DEIR because the Commission has simply asserted, without detailed analysis, that all recreational impacts are less than significant.

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## RECREATIONAL BOATING

For many years, the CEQA Guidelines included, in Appendix G, language that established a presumption that adverse recreational impacts were significant. While that language has been changed, the Commission cannot simply dismiss recreational impacts from significance. Those impacts must be evaluated in light of the other legislative standards. The discussion of significance criteria in Section 4.5.3 fails to do so, and ignores entirely the following guidance used in other EIR's. Many recreational impacts fall under the protection of Section 4(f) of the Federal Transportation Act and are thus deemed to be significant, given the very high standards of that Act. Although that Act is not applicable here, the common practice in most EIR's of dealing with recreational impacts in depth, and with deference to the potentially significant impacts of disrupting recreational uses should be noted. The more relevant standards are enshrined not merely in the MacAteer-Petris Act, but also in the State Constitution. The former provides in Section 66602 that:

existing public access to the shoreline and waters of the San Francisco Bay is inadequate and that **maximum feasible public access, consistent with a proposed project, should be provided** (emphasis added)

That Act was further amended in 2005, adding a number of Sections known as the San Francisco Bay Area Water Trail. That Act has a mandate (Section 66691(b) and (f)) that establishes the importance of water-oriented recreational uses, and calls for improving access to the Bay.

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The latter provides, in Section 4 of Article 10:

No individual ... shall be permitted to exclude the right of way to such water ... **or obstruct the free navigation of such water;**... (emphasis added)

It is these three **legislative** standards about the importance of recreation that should be used to establish a significance standard in evaluating the extension of the lease and its impact on recreation. The conclusory statements in the EIR do not deal with these legislative standards, even in passing, nor do they use them as a basis for determining a threshold of significance.

Turning now to the actual impacts of lease extension, it is clear that they are significant when these standards are used to determine significance. At the present time, the public is explicitly excluded from the water over the leased property. The 4200-foot long causeway and 3440 foot long pier that traverses the leased land is posted "No Trespassing". Therefore, all water craft,